

Before the  
Federal Communications Commission  
Washington, D.C. 20554

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MAR 14 2005

In the Matter of )  
 )  
Amendment of Section 73.202(b), )  
Table of Allotments, ) MM Docket No. 98-155  
FM Broadcast Stations. ) RM-9082  
(Alva, Mooreland, Tishomingo, Tuttle and ) RM-9133  
Woodward, Oklahoma) )

## MEMORANDUM OPINION AND ORDER

Adopted: March 10, 2005

Released: March 14, 2005

By the Commission:

1. The Commission has before it an Application for Review filed by Chisholm Trail Broadcasting Co. ("Chisholm Trail") directed to the staff reconsideration order in this proceeding.<sup>1</sup> Ralph Tyler filed an Opposition to Application for Review. Chisholm Trail filed a Reply to Opposition to Application for Review and a Supplement to Application for Review. For the reasons discussed below, we are granting the Application for Review to the extent of setting aside the staff action reallocating Channel 259C3 to Tuttle, Oklahoma.

## BACKGROUND

2. The *Report and Order* in this proceeding denied a request by Ralph Tyler ("Tyler"), licensee of Station KTSH, Channel 259C3, Tishomingo, Oklahoma, to reallocate Channel 259C3 from Tishomingo to Tuttle, Oklahoma, and modify his Station KTSH license to specify Tuttle as the community of license.<sup>2</sup> The reason for that denial was that the sole remaining service in Tishomingo, noncommercial educational ("NCE") FM Station KAZC, did not provide any portion of Tishomingo with a principal city 70 dBu signal. As such, the staff concluded that Station KAZC should not be treated as providing a "local" service to Tishomingo. On this basis, the staff rejected the proposed Tuttle reallocation because it would result in the removal of sole local service from Tishomingo. The staff subsequently denied Tyler's reconsideration petition.<sup>3</sup>

3. Tyler sought review. Thereafter, Tyler filed a Motion to Leave to File Supplement to Application for Review as well as a Supplement to Application for Review. The Supplement stated that

<sup>1</sup> *Alva, Mooreland, Tishomingo, Tuttle and Woodward, Oklahoma*, 17 FCC Rcd 14722 (MB 2002) ("Tyler Reconsideration MO&O").

<sup>2</sup> *Alva, Mooreland, Tishomingo, Tuttle and Woodward, Oklahoma*, 16 FCC Rcd 1525 (MMB 2000) ("Report and Order").

<sup>3</sup> *Alva, Mooreland, Tishomingo, Tuttle and Woodward, Oklahoma*, 16 FCC Rcd 7979 (MMB 2001) ("Reconsideration MO&O").

NCE FM Station KAZC commenced operation in Tishomingo with upgraded facilities. Station KAZC now operates with the equivalent of Class C2 facilities which more than replicate the Class C3 operation of Station KTSH in Tishomingo. The *Tyler Reconsideration MO&O* concluded that the upgraded operation of Station KAZC removed the sole impediment in this proceeding to favorable action on the Tyler reallocation proposal. The *Tyler Reconsideration MO&O* reallocated Channel 259C3 from Tishomingo to Tuttle, Oklahoma, and modified the Station KTSH license to specify Tuttle as the community of license. In taking this action, the staff also determined that there was no public interest reason to withhold action in this proceeding pending the resolution of a separate inquiry involving Ralph Tyler and Station KAZC. The staff specifically noted that the allegations regarding Ralph Tyler and Station KAZC were outside the scope of this proceeding and the reallocation action would not prejudice that inquiry. Chisholm Trail filed an Application for Review directed to that *Tyler Reconsideration MO&O*.

4. Subsequent to the filing of the Application for Review, the Enforcement Bureau and Tyler have entered into a Consent Decree.<sup>4</sup> Pursuant to this Consent Decree, Tyler surrendered the Station KTSH license, stipulated that he violated Sections 1.17 and 73.1015 of the Commission's Rules and requested dismissal of all his applications, pleadings and proposals currently pending before the Commission.<sup>5</sup> Included among the proposals was his proposed reallocation of Channel 259C3 to Tuttle which remains pending due to the filing of the Application for Review.

### DISCUSSION

5. In view of the fact that the former licensee of Station KTSH specifically withdrew any interest in a reallocation of Channel 259C3 to Tuttle, there is no basis to continue to go forward with any consideration of this reallocation proposal in the context of this proceeding. Consistent with our longstanding policy, we will not allot or reallocate any channel in the absence of a continuing expression of interest in the allocation proposal.<sup>6</sup> Since the reallocation in this proceeding has not become final, we are setting aside the earlier staff action and returning Channel 259C3 to Tishomingo, Oklahoma.

6. We recognize that as a result of this action, it will now be possible for interested parties to file either applications or rulemaking proposals that otherwise would have been precluded by a Channel 259C3 allocation at Tuttle. To ensure that all parties have a fair opportunity to file applications and rulemaking proposals made possible by the restoration of the Tishomingo allocation, we hereby, on our own motion, designate that the effective date of this *Order* is May 9, 2005.<sup>7</sup> The Commission will accept such applications and rulemaking proposals beginning May 9, 2005, and will dismiss any such applications and proposals filed prior to this date.

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<sup>4</sup> See *In the Matter of Ralph H. Tyler*, 18 FCC Rcd 16241 (EB 2003).

<sup>5</sup> Sections 1.17 and 73.1015 of the Rules require a permittee or licensee to provide truthful statements in response to Commission inquiries and correspondence.

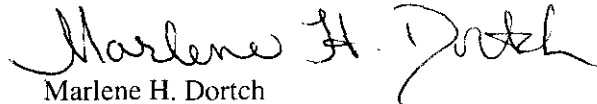
<sup>6</sup> See *Santa Isabel, Puerto Rico and Christiansted, Virgin Islands*, 3 FCC Rcd 2336 (1988); *Oakdale and Campiti, Louisiana*, 7 FCC Rcd 7600 (MMB 1992); *Mount Pleasant and Bogata, Texas*, 16 FCC Rcd 7858 (MMB 2001); *Grants and Milan, New Mexico*, 15 FCC Rcd 20293 (MMB 2000); *DeRuyter and Chittenango, New York*, 14 FCC Rcd 4411 (MMB 1999).

<sup>7</sup> See 47 C.F.R. § 1.103(a).

7. Accordingly, IT IS ORDERED, That the aforementioned Application for Review filed by Chisholm Trail Broadcasting Co., Inc., IS GRANTED to the extent indicated above.<sup>8</sup>

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch  
Secretary

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<sup>8</sup> In its Application for Review, Chisholm Trail also argued that the existing policy of not considering basic qualification issues in an allotment proceeding should be revised to permit such an evaluation when a licensee seeks a change in community of license. In addition, Chisholm Trail contended that the staff erred in issuing a second *Memorandum Opinion and Order* when there was no legal or factual error in the first *Memorandum Opinion and Order*. In view of our action setting aside the reallocation of Channel 259C3 to Tuttle and the fact that Ralph Tyler is no longer a Commission licensee, these arguments need not be considered.